

#### **IV. REMARKS**

##### **Status of the Claims**

Claims 1-7 are amended and claims 8 and 9 are added. Claims 1-9 are presented for further consideration.

##### **Summary of the Office Action**

Claims 1 and 4-7 stand rejected under 35USC102(e) on the basis of the cited reference Shanklin et al, U.S. Patent No. 5,097,939. Claims 2 and 3 stand rejected under 35USC103(a) based on the reference Shanklin. The Examiner is respectfully requested to reconsider his rejection in view of the above amendments and the following remarks.

It is believed that the Examiner's objections to the specification and claims are fully met by the above amendments. The drawings are being corrected to show pusher arms, as described in the specification in support of claim 6.

##### **Discussion of the Cited Reference**

The Examiner relies on the reference Shanklin to support the rejection based on anticipation and for the rejection based on obviousness.

There are two embodiments described in US 5,097,939, namely figures 1 to 6 and figure 7. Figure 7 is explained in columns 13 and 14 starting from line 10 of column 13. It can be regarded as a sort of summary of the technical disclosure of US 5,097,939. There, it is stated that, after an infeed conveyor (10) and a flighted conveyor (40), there is first a control conveyor (20) and afterwards a transfer conveyor (30), (Reference signs of US 5,097,939). In operation, package items (A) are abutted on

control conveyor (20) (cf. Column 3, lines 55 to 58). By the transfer conveyor (30), packages (A) are separated (cf. Column 13, lines 37 to 39).

The most pertinent point of the machine disclosed in US 5,097,939 is described in column 14, lines 9 to 20, where it is described that only the speed of control conveyor (20) is varied in order to have a predetermined special relationship of the packages (A) on the transfer conveyor (30). This is also under lined by the fact that the speed ratio between the flighted conveyor (40) and the transfer conveyor (30) is known and fixed (cf. column 13, lines 53 to 56). This is in contrast to the invention of this considered patent application where it is not the feeder conveyor speed which is varied, but it is the speed of the accumulation conveyor which is varied. Therefore, the system of the '939 patent lacks control of the speed of acceleration conveyor, as in the claims of this application.

Additionally, there is a further difference between the teaching of US 5,097,939 and the present invention because it is also claimed in claim 1 that the speed of the accumulation conveyor and of the feeder conveyor are synchronized during at least a partial handing over of the containers from the feeder conveyor to the accumulation conveyor. This is not the case for US 5,097,939 because necessarily, there is a speed difference between the control conveyor (20) and the transfer conveyor (30) (cf. Column 6, lines 45 to 48).

This leads to the fact that claim 1 contains two characteristics which are clearly different to the teaching of US 5,097,939. These differences have the consequence that containers are much more smoothly handled by the system of the patent application

considered, because there is a smoother handover between the feeder conveyor and the accumulation conveyor, and there is much more time to provide for the exact spacing between a tracing container because an adjusting of the spacing of the container is not only made at the very end of the feeder conveyor as in US 5,097,939, but this adjustment is made during the whole travelling of containers on the second conveyor, i.e. the accumulation conveyor 3 of the present invention.

### **The Issue of Anticipation**

The Examiner is reminded that the anticipation analysis requires a positive answer to the question of whether the system of Shanklin would infringe the claims of this application, if it were later.

All of the claims of this application are directed to a system capable of providing the following functions:

**"a control unit, which controls the motor means (8) such that the desired gap (11) is created between two adjacent containers (1) on the accumulation conveyor (3) and that the speed of the accumulation conveyor (3) and of the feeder conveyor (4) are synchronized during at least a partial handling over of the container (1) from the feeder conveyor (4) to the accumulation conveyor (3)."**

Since the conveyors of the system of the reference Shanklin are controlled differently than the conveyors of the claims of this application, there can be no infringement of the subject claims. Therefore the teaching of Shanklin does not support the rejection based on anticipation with respect to any of the claims.

These arguments apply equally to the rejected dependent claims.

### **The Issue of Obviousness**

It is well settled that in order to establish a prima facie case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, without reference to the disclosure of this application.

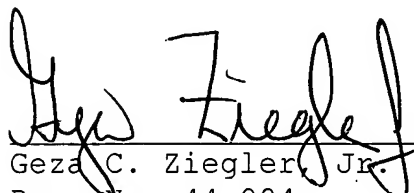
Applicant submits that the modification of the teachings of Shanklin, in order to obtain the invention, as described in the claims submitted herein, would not have been obvious to one skilled in the art.

The above arguments apply equally to the rejected dependent claims.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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2 May 2005  
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